IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.683 OF 2004
IN
ARBITRATION PETITION NO. 200 OF 2004

Midwest Granite Pvt.Ltd. & anr. Appellants
vs.
M/s.Utopian Exports Pvt. Ltd. Respondents

Mr.Janak Dwarkadas, senior counsel with Mr.D.D.Madon, Ms.Trupti Kapadia and Ms.Manik Joshi i/b. M/s. Joy Legal Consultants for the appellants.

Dr.Virendra Tulzapurkar, senior counsel with Mr.P.K.Samdani i/b. M/s.Madekar & Co. for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 1st December 2004

P.C.

Heard Mr.Janak Dwarkadas, the learned senior counsel for the appellants and Dr.Virendra Tulzapurkar, the learned senior counsel for the respondents.

2. The learned Single Judge cannot be said to have erred that the findings recorded by the Arbitrator are findings of fact and no case for interference under Section 34 of the Arbitration and Conciliation Act, 1996 is made out. The arbitral Tribunal on appreciation and consideration of the evidence on record concluded that under the Agreement dated 9th October 1998 between the parties no supplies of marble were made to the purchaser-respondents and that the supplies of marble made in the January 1999 and thereafter were under the

independent oral Agreement entered into between the parties in the month of January 1999 whereby appellants agreed to supply the marble to the respondents on account.

3. The findings recorded by the arbitral Tribunal are concluded on facts. The learned Single Judge, thus, was justified in holding that findings recorded by the Arbitral Tribunal were findings of fact.

4. No case for interference is made out.

5. Appeal is dismissed in limine.

6. We clarify that the Arbitral Tribunal having held that the respondent's counter claim except to the extent of Rs.10,87,524/- admitted by the claimants is outside the ambit and scope of the arbitral proceedings, any observation made by the arbitral Tribunal concerning thereto in the impugned award shall have no bearing in the suit already filed by the present appellant and all aspects relating to counter claim shall be decided in that suit.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)